IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10214 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

MOHANBHAI D VASAVA

Appearance:

1. Special Civil Application No. 10214 of 1998

MRS VASAVDATTA BHATT for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2002

ORAL JUDGEMENT

#. Heard Ms.Vasavadatta Bhatt, learned advocate appearing on behalf of the petitioner Corporation and Mr.J.S.Brambhatt, learned advocate for respondent workman.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Baroda in Reference No.276 / 1995 dated 25th March, 1998, wherein the labour court has granted reinstatement with continuity of service with 50 % backwages of the interim period. Initially , this Court has issued notice on 1st December, 1998 and also granted ad-interim relief staying payment of backwages. Thereafter, on 5th April, 1999, this Court has issued RULE and granted Stay against the payment of backwages.

#. Learned advocate Ms.Vasavadatta Bhatt on behalf of the petitioner Corporation has submitted that the respondent workman was working as Conductor remained absent for period from 4th August, 1993 to 23rd August, 1993. On the basis of the said misconduct, chargesheet was served on the respondent workman. Prior to that, two notices were served on the respondent and thereafter, inquiry was held and ultimately show cause notice was served and dismissal order has been passed on date 19th April, 1994. She also submits that the respondent workman has not given any reply to said two notices and the chargesheet. Not only that the respondent workman did not remain present in the inquiry, no reply to the show cause notice was filed. Ms.Bhatt, learned advocate has also pointed out that no doubt in the chargesheet, it was specifically pointed out the period of absent from 4th August, 1993 to 23rd August, 1993. Thereafter also, the respondent workman further remained absent till dismissal upto 19th April, 1994. She also points out that in past record, in all 56 defaults have been committed by the respondent workman, out of which six defaults are in respect of remaining absent by the respondent workman. She also submitted that the labour court has come to the conclusion that the misconduct is found to have proved as no explanation given by the respondent workman even though while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947, the labour court has granted 50 % backwages to the respondent workman with effect from 19th April, 1994 till 25th March, 1998 which amounts to the premium to the habitual and defaulter employee like respondent workman and therefore, the labour court has committed gross error while granting such relief in favour of the workman and hence, award passed by the labour court impugned in this petition requires to be interfered with by this Court.

#. Learned advocate Mr.J.S.Brambhatt on behalf of the respondent workman has pointed out that the labour court has rightly exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. Mr.Brambhatt, learned

advocate has submitted that past record was not produced by the petitioner Corporation before the labour court and therefore, same cannot be considered by this Court in the present proceedings. It is also submitted that the respondent workman has explained the cause for remaining absent in the statement of claim filed before the labour court and therefore, the respondent workman had remained absent on account of genuine reason and therefore, the labour court has rightly appreciated the defence of the respondent workman and granted relief in favour of the respondent workman. Mr.Brambhatt, learned advocate has also submitted that the labour court has relied upon decision of the Apex Court reported in AIR 1994 SC 215 and therefore, the labour court has not committed any error while passing such award and same is not required to be interfered with by this Court.

#. I have considered submissions of the learned advocates for the parties. It is necessary to note that there is no dispute between the parties that the respondent workman remained absent with effect from 4th August, 1993 to 23rd August, 1993 and further remained absent for further period upto date of dismissal 19th April, 1994. It has also come on record that no explanation has been given by the respondent workman to the departmental authority, nor given any reply to the notices, chargesheet and show cause notice and even not remained present in the departmental inquiry. Before the Corporation, the respondent workman remained silent and remained absent without prior permission of the competent authority for pretty long time even though the labour court has awarded 50 % backwages to the respondent workman. On what ground and consideration such amount of backwages has been granted has not been discussed by the labour court. It is pertinent to note that the labour court has in terms come to the conclusion that misconduct is found to have proved but the labour court has come to the conclusion that the misconduct is not of such serious nature and therefore, powers under Section 11-A of the Act has been exercised. However, it is noticed that the labour court has not given any reasons as to why the labour court has not granted 50 % backwages and how 50 % backwages granted to the respondent workman. It has also come on record that the respondent workman was examined at Exh.12 but the labour court has not discussed any such evidence as to unemployment or gainful employment of the respondent workman. Therefore, it transpires that the labour court has not given any cogent reasons in support of grant of 50 % backwages. So far the directions of the Labour Court in respect of the reinstatement, the respondent workman has already been reinstated in service

on 15th December, 1998 and this fact has not been disputed by the parties before this Court. Therefore, considering the fact for remaining absent without prior permission for the period from 4th August, 1993 to 23rd August, 1993, for such misconduct, in view of this Court, the labour court has rightly exercised the powers under Section 11-A of the Act while granting reinstatement with continuity of service while relying on the ratio laid down by the Apex Court in a decision reported in AIR 1994 pg.215. But the labour court has committed gross error in granting 50 % backwages to the respondent workman. The labour court has neither given any cogent reasons in support of its conclusion nor discussed any evidence in the award for grant of 50 % backwages in favour of the respondent workman. However, considering the fact that the misconduct is proved and moreover, the past record which reflects that in all 56 defaults have been committed by the respondent workman, of which, six are relating to remaining absent without prior permission and when it is not proved that the workman remained unemployed during the interim period, in my opinion, the labour court was not justified in granting 50 % backwages to the respondent workman, which is nothing but it amounts to premium to such defaulter workman. Therefore, according to my opinion, 50 % backwages granted by the labour court in favour of the respondent workman requires to be quashed and set aside.

#. In the result, the direction issued by the labour court in Award passed in Reference No.276/95 dated 25th march, 1998 so far it relates to grant of 50 % backwages of the interim period is hereby quashed and set aside, whereas, the direction of the labour court in the said award granting reinstatement with continuity of service remains intact and not disturbed by this Court.

#. Mr.Brambhatt, learned advocate for respondent workman has submitted that the respondent was not reinstated immediately from the date of award but he has been reinstated from 15th December, 1998. Therefore, the respondent workman is entitled to full wages from the date of award. Considering the request of learned Advocate Mr.Brambhatt, it is directed to the petitioner Corporation to pay full wages to the respondent workman with effect from 25th March, 1998 to 15th December, 1998 within period of two months from the date of receipt of copy of this order.

Present petition stands allowed accordingly.
Rule is made absolute accordingly. No order as to costs.

Date : 3-5-2002 [H.K.Rathod, J.]

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